

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
YOKO ONO LENNON, SEAN ONO LENNON,
JULIAN LENNON, and EMI BLACKWOOD
MUSIC, INC.,

Plaintiffs,

-against-

PREMISE MEDIA CORPORATION, L.P., C&S
PRODUCTION L.P. d/b/a RAMPANT FILMS,
PREMISE MEDIA DISTRIBUTION L.P. AND
ROCKY MOUNTAIN PICTURES, INC.,

Defendants.
-----x

08 CV 3813 (SHS)(FM)

**Affidavit of Yoko Ono
Lennon In Support of
Plaintiffs' Motion For A
Preliminary Injunction**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Plaintiff, YOKO ONO LENNON, being duly sworn, deposes and says:

1. I am one of the Plaintiffs in the above captioned action. As the widow of the late John Lennon, I am one of the copyright owners of the musical composition "Imagine". Under my late husband's will I was appointed Executrix and charged with protecting and preserving his name, assets and legacy. I then succeeded, individually, to trademark and other intellectual property interests owned by John Lennon on his death, including, but not limited to, the trademark in "Imagine" (the "Mark").

2. My late husband's stature as a musician, artist, political activist and musical icon of the twentieth century is indisputable.

3. Together with the Co-Plaintiff, EMI Blackwood Music, Inc. (our exclusive administrator for musical compositions), I work to control the manner in which John Lennon's music is licensed and utilized.

4. "Imagine" has been licensed and featured in countless highly publicized contexts, including the 1984 Academy Award nominated film The Killing Fields, at the opening ceremony of the 2006 Winter Olympics in Torino, Italy, and for the past three years served as the musical "backdrop" in Times Square in New York City on New Year's Eve, before the famous midnight drop of the New Year's ball.

5. I believe "Imagine" is one of the, if not the "signature" song, written by my late husband. "Imagine" earned accolades from all corners of the music world. In 2004, Rolling Stone magazine voted "Imagine" the third greatest song of all time. Likewise, the Recording Industry Association of America has included the Imagine Recording among its ranking of the most historically significant recordings. Imagine is immediately recognizable to most Americans.

6. I have licensed the use of the Mark throughout the world in numerous instances including, most recently, the creation and installation of the Imagine Peace Tower in Reykjavik, Iceland. "Imagine" was also the title of the critically acclaimed David Wolper documentary on the life of John Lennon, produced with my participation. I also control the creation and licensing of many types of products which spread the message of John Lennon and his creative works.

7. On or about April 15, 2008, I became aware of press reports posted on Internet news sites incorrectly stating that I had licensed or otherwise authorized the use of "Imagine" in a motion picture entitled "Expelled: No Intelligence Allowed"

(the "Movie"). This was the first time that I became aware of the Movie or the use of "Imagine" in the Movie.

Defendants Unauthorized Use

8. I am advised that the Movie prominently features the use of John Lennon's recording of "Imagine", together with a reproduction, by subtitle, of a portion of the lyrics of the song on the screen.

9. None of the Defendants sought permission to use "Imagine" from me or from EMI Blackwood Music, Inc.

10. The use of "Imagine" is not only an affront to the intellectual property rights Plaintiffs control encompassed under our copyright, it is also causing harm to the trademark rights as well.

11. I learned from the initial press reports that the use of "Imagine" in the Movie was causing widespread criticism and concern about why those responsible for licensing "Imagine" would permit such use. As the April 16, 2008 online edition of The Wall Street Journal explained, "Word of the song's appearance in 'Expelled: No Intelligence Allowed' outraged bloggers, who immediately began speculating about why Ms. Ono would allow the song to appear in what they characterized as 'creationist propaganda.'" A copy of The Wall Street Journal article is attached as Exhibit A.

12. In one of the most aggravated instances of confusion about such alleged, false authorization, on the widely read HuffingtonPost.com, the blogger James Boyce attacked me, when he stated:

"Yoko Ono either sold or gave the rights to "Imagine" to the producers of the film. In screenings around the country, and in copies of the movie reviewed, everyone notes the odd inclusion of the song. I guess that the \$20 million plus the estate earns every year isn't enough for Yoko Ono, not only does she feel the need to license the song out, she probably held out for the highest bidder..."

Mr. Boyce retracted this malicious statement when informed by my attorney that, in fact, no permission had been granted by me. A copy of Mr. Boyce's article and retraction are attached as Exhibit B.

The Irreparable Harm to Plaintiffs

13. Together with EMI Blackwood Music, Inc., I carefully consider each and every request for a synchronization use such as the one made in the Movie. While a fee is negotiated for uses of this kind, the information a potential licensee provides to us regarding how the song will be used is of paramount concern for me.

14. As set forth in the accompanying affidavit from EMI Blackwood Music, Inc., I carefully select how and where we license John Lennon's musical works to third parties. Losing control of this process harms the copyright in "Imagine" in a manner which simply cannot be quantified in money damages---the loss of this control is irreparable.

15. As is clearly apparent from the press report, speculation about my "selling out", tarnishes and diminishes the legacy left by John Lennon.

16. If anyone could use "Imagine", or any other John Lennon song, without permission, the work which EMI Blackwood Music, Inc. and I have done for decades would simply be destroyed.

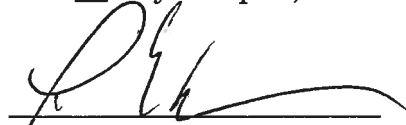
17. One of the most basic rights I control by reviewing and choosing licenses is the right to say "no". The filmmakers simply looted me of the ability to do

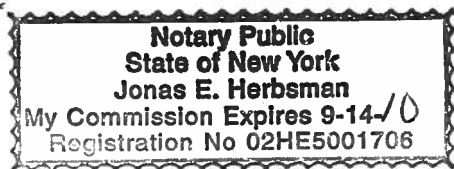
so. I ask that the Court not condone this type of behavior so that it will not create a damaging precedent.

18. I have not asked this Court, or any other Court, for the relief sought herein by prior application or otherwise.


YOKO ONO LENNON

Sworn to before me
this 29 day of April, 2008


Notary Public





April 16, 2008 10:27 p.m. EDT

Yoko Ono, Filmmakers Caught in 'Expelled' Flap

By ETHAN SMITH
April 16, 2008 10:27 p.m.

Having ruffled feathers in the scientific community, the filmmakers behind a documentary questioning evolution theory have now incurred the wrath of one of the most powerful figures in the popular music business, Yoko Ono, and have generated a blogosphere mini-drama in the process.

The flap concerns the film's use of the song "Imagine," by the late John Lennon. Bloggers had accused Ms. Ono, Mr. Lennon's wife, of selling out by licensing the song to the filmmakers. In fact, her lawyers say, she never granted permission for its use.

The movie is set to open Friday on 1,000 screens, according to a press release from Premise Media Corp., the film's producer.

The dustup has already led to both a scathing article and a retraction on the site HuffingtonPost.com, where Wednesday afternoon writer James Boyce took back an article he had posted 48 hours earlier: "I apologize to Mrs. Lennon for my incorrect assumptions and statements in the article below which, of course, I retract completely."

Word of the song's appearance in "Expelled: No Intelligence Allowed" outraged bloggers, who immediately began speculating about why Ms. Ono would allow the song to appear in what they characterized as "creationist propaganda." ("What else would you expect them to say?" asked Mark Mathis, the film's associate producer. "They're absolutely infuriated when anyone dares question their philosophy.")

"I guess that the \$20 million plus the estate earns every year isn't enough for Yoko Ono," Mr. Boyce wrote Monday in the Huffington Post¹, referring to an income estimate printed by Forbes magazine. "Not only does she feel the need to license the song out, she probably held out for the highest bidder."

But according to a lawyer for Ms. Ono, the filmmakers did not have permission to use the song, for any amount of money.

Ms. Ono's lawyer, Jonas Herbsman, of Shukat, Arrow, Hafer, Weber & Herbsman, said in an interview Wednesday: "It was not licensed." With respect to the filmmakers, he says: "We are exploring all options." It is not clear what remedies if any may be available to Ms. Ono.

In a written statement, the film's three producers -- Walt Ruloff, John Sullivan and Logan Craft -- acknowledged that they did not seek permission, but they called the use "momentary." "After seeking the opinion of legal counsel it was seen as a First Amendment issue and protected under the fair use doctrine of free speech," the statement said. A spokeswoman said under 25 seconds of the song are used in the movie.

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Typically when producers want to use a song in a film or television program, they need permission from at least two parties: the song's publisher and the record label that distributes the recording they want to use. Big-name artists often retain veto power over any such uses, and in the case of Mr. Lennon's music, those decisions lie in the hands of Ms. Ono.

The film stars Ben Stein, a Yale-educated lawyer and popular pundit who for the film affects a persona akin to a conservative version of Michael Moore, the provocative liberal documentary filmmaker. According to early reviews and the film's trailers, "Expelled" purports to demonstrate that American academia routinely discriminates against people who espouse so-called "intelligent design" theory -- a proposed alternative to evolution that would allow for the participation of a supernatural force in critical biological processes.

Evolutionary biologist Richard Dawkins and others have complained in various public statements that they were duped into participating in interviews for the film. They have said the filmmakers misrepresented the kind of movie they were making. Mr. Mathis, the film's associate producer, disputed that account, saying he personally described the film to interview subjects and even sent many of them the questions he planned to ask.

Bloggers also questioned whether another popular rock group, the Killers, had given permission for the inclusion in the film of one of their songs, "All These Things That I've Done." A spokesman for Vivendi SA's Universal Music Group, which owns the band's record label and music publisher, said licenses had been issued.

Write to Ethan Smith at ethan.smith@wsj.com²

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(2) <mailto:ethan.smith@wsj.com>

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Posted April 14, 2008 | 10:11 AM (EST)

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All:

Well, it's been an interesting time since I first published this. I never thought that someone, far less Ben Stein, would take a song as famous as "Imagine" and use it in his film without permission.

However, I have learned that in fact Yoko Ono did not license the song for use in the film Expelled: No Intelligence Allowed, and any use of the song in that film is being made without authorization.

Obviously, I apologize to Mrs. Lennon for my incorrect assumptions and statements in the article below which, of course, I retract completely. I will also find out more about the producers of the movie and what their motives are.

Sincerely,

James Boyce

The Outer Banks

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I like to think I've seen it all, or at least a good portion it. But this Friday, a new movie comes out; one that is nothing more than creationist propaganda in the fine tradition of cigarettes don't kill you and global warming is just a natural occurrence.

The movie, *Expelled: No Intelligence Allowed*, has been reviewed and reviewed and discussed.

But what hasn't been discussed as much is the fact that Yoko Ono either sold or gave the rights to "Imagine" to the producers of the film. In screenings around the country, and in copies of the movie reviewed, everyone notes the odd inclusion of the song.

I guess that the \$20 million plus the estate earns every year isn't enough for Yoko Ono, not only does she feel the need to license the song out, she probably held out for the highest bidder, in this case, the money behind the movie, Walt Ruloff, who made over one hundred million dollars selling his company to Microsoft. (Irony is that a company who makes computers, perhaps the ultimate daily example of the higher power of science in our lives, indirectly funded a movie that doesn't believe science should be taught in schools.)

Of course, it wasn't just Yoko Ono that sold out, the Killers did too (and I am a bigger Killers fan than I am fan of hers to be honest.) Their song, "All These Things That I've Done," is also in the movie. I hear that the going rate for a song like this is a million dollars, again, why can't the Killers be happy with the tens of millions they are making every year? Who knows?

"Imagine" and "All These Things I've Done" are great, great songs -- maybe one day they'll get sold to a movie I actually am going to see.

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